

Claimant began working for respondent in March 2001. In late June 2001, claimant began operating a machine that glued covers onto books. That job required repetitive lifting and repetitive arm and hand movements. In early July 2001, claimant began

experiencing soreness and swelling in her right wrist. About the same time, claimant also began experiencing some discomfort underneath her left shoulder blade.

Because the wrist symptoms were interfering with claimant meeting quota, claimant reported the right wrist symptoms to her supervisor and was referred for medical treatment. Within days of reporting the right wrist symptoms, respondent terminated claimant on August 6, 2001, without any verbal or written warning.

Claimant admits she did not mention her left shoulder symptoms to her supervisor. Claimant explained that she was not concerned about her left shoulder symptoms as she believed those symptoms were minor and would resolve on their own. Conversely, claimant was very concerned about her right wrist pain and swelling, which was preventing her from using her right arm.

Claimant allegedly mentioned her left shoulder symptoms to Dr. Donald T. Mead during the time the doctor was treating her right wrist. But the medical records do not refer to left shoulder complaints until February 2002, when claimant saw Dr. Lynn A. Curtis for a functional impairment evaluation. Dr. Curtis, after finding muscle spasm in the left shoulder and a loss of range of motion in that joint, diagnosed left shoulder tendinitis and recommended treatment.

In July 2002, at the Judge's request, claimant saw Dr. Peter V. Bieri, who found claimant had a slight decrease in the range of motion of the left shoulder. Dr. Bieri reported to the Judge that he recommended medical treatment for claimant's left shoulder complaints, assuming her complaints were valid. The doctor also indicated in his July 15, 2002 report that claimant had not worked after August 6, 2001, the date that she was terminated.

After considering claimant's testimony and the medical records introduced at the preliminary hearing, the Board affirms the Judge's finding that claimant injured her left shoulder while working for respondent. The Board finds that claimant's symptoms in her right wrist and left shoulder began shortly after claimant commenced operating the machine that removed and replaced the backing on books. Consequently, claimant is entitled to receive workers compensation benefits for both the right wrist and left shoulder injuries.

Respondent and its insurance carrier argued in their brief to the Board that the Judge erred by ignoring the medical report of Dr. Bieri and, in particular, the doctor's statement that he was unable to state within reasonable medical probability that claimant sustained any injury to the left shoulder. Respondent and its insurance carrier argue that K.S.A. 44-516, which provides that the medical report of a neutral doctor selected by a judge shall be considered by the judge in making a final determination, required the Judge

to find that claimant's left shoulder complaints were not related to her employment with respondent. The Board disagrees. In short, the statute in question merely requires a judge to consider the neutral doctor's report in light of the other evidence presented. The statute does not require a judge to adopt the opinions provided.

In their brief to the Board, respondent and its insurance carrier also argue that claimant had failed to provide respondent with timely notice of the accident. The Judge did not make any findings regarding notice as that issue was not raised at the preliminary hearing. A careful reading of the preliminary hearing transcript indicates that the only issue raised before the Judge was whether the symptoms in claimant's left shoulder were related to the work she performed for the respondent. In summarizing the issues for preliminary hearing, the Judge and defense counsel stated:

JUDGE AVERY: That's fine.

Claimant is seeking temporary total from 8/17/01 to 1/14/02, that's been agreed to. The average weekly wage was 372 for purposes of the preliminary hearing. The only dispute issue is the authorization for treatment of the left shoulder. **In that regard respondent is denying causation as a result of a work-related accident.**

You're not denying anything except for the work-related accident, you're denying that the left shoulder condition is related?

MR. DEANE: The left shoulder is not timely or related to the right upper extremity's condition.

JUDGE AVERY: **You're denying causation?**

MR. DEANE: Right.

JUDGE AVERY: With that, the claimant may call its first witness.¹
(Emphasis added.)

The Board also notes, incidentally, that respondent and its insurance carrier did not mention in their application for review that timely notice of accident was an issue being raised to the Board. See K.A.R. 51-18-3, which requires the parties to specify in their applications for review the issues that are in dispute for purposes of the appeal.

¹ P.H. Trans. at 3-4.

The Board concludes respondent and its insurance carrier did not raise notice as an issue for Judge Avery to decide. Consequently, the Board may not address that issue for the first time on appeal as the Board's jurisdiction is limited to those issues that were presented to the administrative law judge.

The review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge.²

Respondent and its insurance carrier's counsel is reminded that photocopies of the hearing transcripts and the exhibits are neither required nor desired as the Board obtains the record from the administrative law judge when a claim is appealed.

WHEREFORE, the Board affirms the October 17, 2002 Order for Compensation and the November 18, 2002 Amended Order for Compensation entered by Judge Avery.

IT IS SO ORDERED.

Dated this ____ day of December 2002.

BOARD MEMBER

c: George H. Pearson, Attorney for Claimant
Jeffrey W. Deane, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Director, Division of Workers Compensation

² K.S.A. 44-555c(a).